

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. [2018-25-E](#) - ORDER NO. 2018-272

MAY 2, 2018

IN RE: Joint Petition to Transfer a Certificate of	)	ORDER APPROVING
Environmental Compatibility and Public	)	TRANSFER OF
Convenience and Necessity from Columbia	)	CERTIFICATE AND
Energy LLC to South Carolina Electric &	)	APPROVING CONTRACT
Gas Company	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Joint Petition of Columbia Energy LLC (“Columbia Energy”) and South Carolina Electric & Gas Company (“SCE&G”) (together the “Applicants”) (“Joint Petition”) filed on January 17, 2018, and seeking Commission approval to transfer a Certificate of Environmental Compatibility and Public Convenience and Necessity (“Certificate”) from Columbia Energy to SCE&G pursuant to S.C. Code Ann. § 58-33-110(2) (2015); and of the Energy Services Agreement (“ESA”) currently between Columbia Energy and DAK AMERICAS, LLC (“DAK AMERICAS”) which will be assigned to SCE&G. The facility itself will not be included in SCE&G’s rate base.

By letter dated January 31, 2018, the Clerk’s Office of the Commission instructed the Applicants to publish, one time, a Notice of Filing in newspapers of general circulation by February 15, 2018. The purpose of the Notice of Filing was to inform interested parties of the Joint Petition of the Applicants and of the manner and time within which to file the appropriate

pleadings for participation in the proceeding. The Applicants timely complied with this instruction and on February 15, 2018, provided the Commission with affidavits demonstrating that the Notice was duly published in accordance with instructions set forth in the Clerk's Office January 31, 2018, letter. The South Carolina Solar Business Alliance ("SCSBA") filed a Petition to Intervene in this Docket, but later filed a letter dated March 5, 2018, withdrawing its Petition. No other petitions to intervene were filed. The South Carolina Office of Regulatory Staff ("ORS") is a party of record pursuant to statute.

On March 19, 2018, counsel for the ORS filed a letter with the Commission stating that ORS did not object to the transfer of the Certificate, but ORS recommended that the Applicants file the ESA with the Commission for approval. By Order No. 2018-209, the Commission held the transfer of the Certificate in abeyance and ordered the Applicants to file the ESA and request approval.

On March 27, 2018, and in compliance with Order No. 2018-209, the Applicants filed a copy of the ESA with the Commission and requested approval. By Order No. 2018-251, the Commission approved the ESA between Columbia Energy and DAK AMERICAS.

Based upon the following findings of fact and conclusions of law, the Commission herein approves the transfer of the Certificate and further approves the ESA through which SCE&G will sell thermal energy to DAK AMERICAS after the ESA is assigned to SCE&G.

**FINDINGS OF FACT**

1. Columbia Energy is a limited liability company organized under the laws of the State of Delaware.

2. Columbia Energy owns or otherwise has rights to use an approximately 540 megawatts rated combined cycle gas-fired generation facility and equipment located near Gaston South Carolina (the “Facility”), and on December 20, 2017, entered into an Asset Purchase Agreement with SCE&G through which Columbia Energy will sell, and SCE&G will buy, the assets and properties comprising the Facility.

3. The Facility currently operates pursuant to a Certificate of Environmental Compatibility and Public Convenience and Necessity (“Certificate”) granted by the Commission in Order No. 2001-108, issued February 6, 2001, in Docket No. 2000-487-E.

4. SCE&G is a corporation organized and existing under the laws of the State of South Carolina. Further, SCE&G is, in part, an electrical utility engaged in the generation, transmission, distribution, and sale of electricity to the public for compensation. SCE&G’s retail electric operations are subject to the jurisdiction of the Commission pursuant to the provisions of Chapter 27 of Title 58 of the South Carolina Code of Laws.

5. SCE&G operates an integrated electric utility system that serves approximately 717,000 customers in 24 counties covering nearly 16,000 square miles in central, southern and southwestern portions of South Carolina. SCE&G’s service territory includes the metropolitan areas of Charleston, Columbia, Beaufort, and Aiken and many other smaller cities and towns, and rural areas in South Carolina.

6. SCE&G is an experienced utility operator that is fully capable of operating the Facility.

7. SCE&G currently purchases the electrical power that the Facility generates from Columbia Energy to support SCE&G's service to its customers.

8. SCE&G has agreed that it is and will continue to be bound by all of the terms and conditions set forth in Order No. 2001-108, wherein the Commission granted the Certificate of Public Convenience and Necessity for the Facility.

9. SCE&G has further agreed that it is and will continue to be bound by any and all lawful orders issued by this Commission in connection with the operation of the Facility.

10. On March 27, 2018, and in compliance with Commission Order No. 2018-209, the Joint Applicants filed the ESA, along with its amendments, and requested that the ESA and its amendments be approved by the Commission. In its March 27 filing, the Joint Applicants stated that the ESA will be assigned to SCE&G as a condition of the sale of the Facility to SCE&G. Based upon the Commission's recent review of the ESA, the Commission affirms its findings in Order No. 2001-108 that the ESA contains extensively negotiated provisions for the following: (1) coordinating construction efforts and safety practices; (2) coordinating energy deliveries, fuel supplies and maintenance schedules; (3) arranging reliable back-up energy supplies in the event the Facility is not operating for any reason; (4) risk of loss and indemnification; (5) billing and payment; (6) events of default and remedies therefor; (7) audit rights; and (8) dispute resolution. Contractual provisions

for governing law, notice and service, assignability, severability and survival, force majeure, insurance, and confidentiality are also included in the ESA.

### **CONCLUSIONS OF LAW**

1. S.C. Code Ann. Section 58-33-110(2) provides that “[a] certificate may be transferred, subject to the approval of the Commission, to a person who agrees to comply with the terms, conditions, and modifications contained therein.” SCE&G’s agreement to comply with the terms of Order No. 2001-108, as well as any lawful orders issued by this Commission in connection with the Facility, satisfies the requirements of S.C. Code Ann. Section 58-33-110(2).

2. The sale of thermal energy under the terms of the ESA would constitute a “public utility” service and a basis for the exercise of the Commission’s regulatory jurisdiction under S.C. Code Ann. §§ 58-5-10, *et seq.* (2015).

3. While the ESA has been amended several times since the issuance of Commission Order No. 2001-108, the ESA continues to represent “the product of extensive negotiation of terms and conditions by two sophisticated business entities . . . .”

4. Moreover, the ESA contains those provisions referenced in Commission Order No. 2001-108, “all of which are designed to protect each party’s interests in the contractual relationship.” Following the closing of the transaction between SCE&G and Columbia Energy, SCE&G will assume the rights and obligations previously held and owed by Columbia Energy.

5. The ESA continues to embody those aspects we described in Order No. 2001-108 (extensive negotiations and bargaining process, the business sophistication of the

parties involved and the comprehensive provisions that the parties have incorporated into the ESA to protect their respective interests); therefore, public convenience and necessity would best be served by the Commission's certification of SCE&G to operate under the terms of the ESA. The Facility itself will not be added to SCE&G's rate base.

IT IS THEREFORE ORDERED THAT:

1. The transfer of the Certificate of Environmental Compatibility and Public Convenience and Necessity for the operation of the Facility from Columbia Energy to SCE&G be, and hereby is, approved.

2. A Certificate of Public Convenience and Necessity is hereby granted for the Energy Services Agreement between SCE&G and DAK AMERICAS, and the ESA along with its amendments is hereby approved. The Certificate of Public Convenience and Necessity for the ESA along with its amendments shall be effective upon the assignment of the ESA to SCE&G.

3. Because the ORS does not object to the relief sought in the Joint Petition, no other party has maintained intervention or objected to the relief sought in the Joint Application, and because the ESA is a contract to provide thermal energy to one customer and will not affect other customers, a hearing is not required in this Docket.

4. This Order shall remain in full force and effect until further order of the Commission.

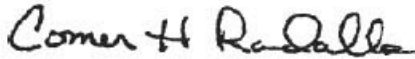
BY ORDER OF THE COMMISSION:



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Swain E. Whitfield, Chairman

ATTEST:



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Comer H. Randall, Vice Chairman